State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

H.B. NO. 5640 AN ACT CONCERNING COMPELLED DISCLOSURE OF CELLULAR TELEPHONE AND INTERNET RECORDS

JOINT COMMITTEE ON JUDICIARY
March 23, 2016

The Division of Criminal Justice fully supports H.B. No. 5640, An Act Concerning Compelled Disclosure of Cellular Telephone and Internet Records and recommends the Committee's JOINT FAVORABLE REPORT. Over the past year the Division has worked with the Division of Public Defender Services, the Connecticut Chiefs of Police Association, and the American Civil Liberties Union of Connecticut to craft a revision to General Statutes §54-47aa that will protect the privacy and civil liberties of Connecticut's citizens while, at the same time, allowing law enforcement to expeditiously obtain electronic communication information. This bill achieves those goals.

As currently crafted, H.B. 5640 allows law enforcement to obtain a service provider's records showing subscriber information and call history (the numbers that particular phone called or from which it received calls) upon a judge's finding that law enforcement has reasonable suspicion that a crime has occurred. In order to obtain the content of any electronic communication or "geo-location data" (cell tower "hits"), law enforcement must meet a higher standard by showing probable cause that a crime has been committed before an order may issue.

The bill also would allow law enforcement to obtain geo-location data covering a 48-hour period by direct request to provider in emergency circumstances, such as a kidnapping, an active pursuit of a suspect or a lost child.

As crafted, H.B. 5640 meets constitutional standards, protects civil liberties, comports with recent case law, and promotes the public's interest in obtaining potentially valuable information.

Testimony on HB 5642, AAC the Recommendations of the Juvenile Justice Policy Oversight Committee
Presented to the Judiciary Committee March 23, 2016

As a member of the Juvenile Justice Policy Oversight Committee, commonly referred to as the JJPOC, I find it very difficult to testify on this bill today.

I support the purpose of the committee which is stated in the founding language: "to evaluate the policies related the juvenile justice system..." and to recommend "statutory changes concerning the juvenile justice system...." However, I find myself opposing much of House Bill 5642 as it is currently written.

That being said, I am truly encouraged by the conversations that took place yesterday in a meeting that I attended with several JJPOC members and the co-chair, Representative Walker. We reviewed every section of the bill, and I am hopeful that significant changes will follow and many of my concerns will be alleviated.

There are many positive measures in HB 5642 aimed at reducing the number of youth in detention, such as limiting the reasons a youth can be detained, reducing the amount of time a youth is held in detention prior to having a dispositional hearing, and requiring the development and implementation of a detention risk assessment instrument to help determine which situations necessitate a youth being detained.

I also support the premise that truancy is a school issue and not one that should be dealt with in the court system. As written, there are many worthy training initiatives and systematic changes that are well-intentioned, but based upon the demands that they put upon the State Department of Education and the State Board of Education, I fear that they will generate significant fiscal notes and will therefore be unattainable. However, I am hopeful that some sections of the bill will be amended in a way that keeps them moving forward, and others will be put aside for now but contemplated again in the future.

Unfortunately, I also have many reservations about HB 5642. First, I oppose Section 5 as I believe it adds a time-consuming step of adding a case review team (CRT) to the process of filing a petition if a child has violated a court order. I believe this will unnecessarily prolong the process and will be very difficult to implement with efficacy. I am expecting that this section will be eliminated in the final version, based upon yesterday's discussions.

The language contained within Section 6 is a twist on what is already incorporated in the Children's Behavioral Health Plan, Public Act 13-178, and will be accomplished if this public act is supported by the budget and given time to be fully implemented. Although there seemed to be an understanding in yesterday's meeting that this section will be amended to align with 13-178, I am concerned that if this is not done, future funding could be diverted from the Children's Behavioral Health Plan and allocated to this bill, which focuses only on the juvenile justice population and not the overall well-being of all children, as addressed in PA 13-178.

Section 8 is the section that I continue to find the most problematic. I have stated on many occasions that I do not support the closure of the Connecticut Juvenile Training School. Unfortunately, I do not think that it is realistic to believe that we will ever be in the position of not needing any secure setting options for our population of adjudicated youth. I am sensitive to the fact that at the current census of approximately forty-five youth, operating CJTS has become cost-prohibitive. However, I believe there are many alternatives to closing the facility.

1. I participated in a series of DCF-requested workshops with CJTS stakeholders and architects, in which many cost-effective architectural changes were proposed that would substantially improve the physical environment. These include making the rooms double occupancy for better socialization, reworking the fencing to make the grounds and physical plant into a combination of secure and non-secure buildings, reformatting common space and visiting areas, and more.

2. If CJTS is closed, I am not confident our budgetary constraints will allow for the necessary community-based program structure to be enhanced and established by July 1, 2018. I say this based on the fact that the Department of Children and Families has "saved" almost $100 million in the past four years, much by reducing congregate care, and we have seen at least half of that go back into the general fund as opposed to supporting community based services. I previously attempted to make an amendment to JJPOC recommendation which would have required that the services be in place prior to the closure of CJTS, but it wasn't agreeable to the committee's leadership.

3. As you are aware, there is an effort to "Raise the Age" again in CT. Given the fact that the effect of this possible policy change on our population of adjudicated juveniles has yet to be studied, I fear that we will have more youth than capacity moving from the adult population to the juvenile population.

4. Lastly, as a member of the detention sub-committee of the JJPOC, I have participated in discussions regarding the appropriate court in which to hear the cases of youth under 18 years of age who have been charged with Class A felonies (and possibly even some B felonies) as well as the appropriate place to house these youth once adjudicated. I again posit the idea that these youth should not be among adults in our correctional facilities. It would be more appropriate to house them in the CJTS building, which has superior accommodations, comprehensive educational and vocational programing, and would separate them from the negative influences of an adult correctional facility.

While members of yesterday's meeting agreed to look at making changes to the current language in Section 8, I must draw your attention to line 250 of the bill which gives the JJPOC equal authority to DCF in planning the closure of CJTS, should it go forward. I believe this to be an overreach of the JJPOC's authority, which is a reasonable assumption based on Governor Malloy's statements to the committee on January 28, 2016, when he said "I've set a goal to close the Connecticut Juvenile Training School by July 1, 2018. Members of this body may help to advise DCF as they develop a plan to meet that goal."

I also have concerns regarding Section 19; however, it was said to be "on hold" at yesterday's meeting. Given the fact that it wasn't classified as "eliminated," I would like to register my apprehension about imposing a ban on out-of-school suspension on all DCF and CSSD residential facilities. Although I agree that in-school suspension is a much superior policy to out-of- school suspension, I do not believe there to be appropriate accommodations available in their school facilities to impose in-school suspensions, especially in DCF's Solnit South and CJTS school buildings.

Similarly, I believe that continuation of quality education for youth in our juvenile justice system is very important. However, I also believe that Section 27 presents many problems. Creating an electronic system that allows access by to educational records of children within the juvenile justice system would come with much cost and require significant technical updates to our current systems. I am not confident that it can be done in a way that completely de-identifies the youth in order to comply with their rights to confidentiality.

Next I bring your attention to Section 37(m), which as written; I believe goes beyond the reasonable scope of the JJPOC committee. I do not approve of the established data working group overseeing the sharing of data related to juveniles involved with the juvenile justice system. However, if amended as determined yesterday, I find the language change charging the workgroup to "develop, implement and maintain" the sharing of data to be a significant improvement.

Additionally, I do not agree with Section 38 at all. It was determined at Tuesday's meeting that this section will be eliminated in its entirety, and I trust that this will be the case.

I must also point out that HB 5642, while referred to as a work in progress, does not address the circumstances and needs of our youth under the age of 21 who are under the care of our adult correctional agency--the Department of Corrections. It has been stated that the JJPOC did not have time to make recommendations for this segment of youth in the system, but I believe this to be a shortcoming of the bill.

I now draw your attention to the fact that the bill, as written, requires nearly thirty-five reports be generated by Executive Branch agencies and submitted to the JJPOC. I object to the fact that HB 5642 bill does not require a copy of each report be given to the legislative committee of cognizance over each agency. I understand that the reporting requirements will be eliminated and Section 37 will include a stipulation that the JJPOC may request information from all agencies, but I believe that this is simply a semantics change. Therefore, I request that any informational queries or reports generated by an agency be submitted to the legislative committee of cognizance in addition to the JJPOC.

Lastly, given the fact that the language creating the JJPOC was passed in the 2014 implementer bill, and the language expanding the committees scope was passed on a consent calendar after midnight on the eve of the last day of session, I make a request for the record that this bill be circulated through the legislative process to the committees of cognizance. With thirty-three references to the Department of Children and Families, and as currently written 13 reports to be generated by this agency, I ask specifically that this bill be referred to the Committee on Children prior to its delivery to the House of Representatives.